# Muniandy v Tan Peck Soo & Ors

HIGH COURT (KUANTAN) — SUIT NO 336 OF 1985
LAMIN J
29 DECEMBER 1989

*Civil Procedure — Statement of claim — Striking out — Reasonable cause of action — Power of court to dismiss action summarily — When to be exercised — Rules of the High Court 1980, O 18 r 19*

*Evidence — Immunity — Statements made to police to effect detention by Minister — Whether rule of absolute immunity extends to ministerial detention*

The plaintiff issued a writ against the defendants claiming that they had wrongfully procured the police to arrest him as a member of a gang which was terrorizing and intimidating people in Raub, Pahang. The plaintiff claimed that the allegations made by the defendants were made out of spite and malice and caused him to be detained for over three years. The defendants applied to have the statement of claim struck out and the action dismissed as disclosing no reasonable cause of action. The application was dismissed by the senior assistant registrar and the defendants appealed to a judge in chambers.

**Held**, dismissing the appeal:

(1) There is an absolute immunity from liability to an action for statements made in the course of proceedings before a court and this would apply to cover conduct or statements made prior to commencement of proceedings if it could be said to be part of the investigations.

(2) However, the present case involved a statement or report made for the purpose of arresting the accused so that an order of detention could be made under the Emergency (Public Order and Prevention of Crimes) Ordinance No 5 of 1969. The plaintiff's prosecution in court was not contemplated. A serious question of law therefore arose as to whether the rule of absolute immunity from civil action can be extended to cover ministerial orders.

(3) The court has the inherent power to dismiss an action summarily, but this power should be exercised sparingly and only in exceptional cases. The present case gave rise to serious questions of law and fact which could only be fully dealt with at trial. The appeal was accordingly dismissed with costs.

[*Editorial Note*: The defendants have appealed to the Supreme Court vide Civil Appeal No 343 of 1988.]

**Cases referred to**

1 *Marrinan* v *Vibart & Anor* [1962] 3 All ER 380 (refd)
2 *Evans* v *London Hospital Medical College & Ors* [1981] 1 All ER 715 (refd)
3 *CC Ng & Brothers Sdn Bhd* v *Govt of State of Pahang* [1985] 1 MLJ 347 (folld)

**Legislation referred to**

Emergency (Public Order and Prevention of Crimes) Ordinance No 5 of 1969
Rules of the High Court 1980 O 18 r 19

*HS Nijar* for the plaintiff.
*M Pathmanathan* for the defendants.

*Cur Adv Vult*

**Lamin J**: This is an appeal to the judge in chambers on the decision of the learned senior assistant registrar dismissing the defendants/appellants' application under O 18 r 19 of the Rules of the High Court 1980 to have the plaintiff/respondent's statement of claim struck out and his action dismissed.

In his statement of claim, the plaintiff alleges that in or about late 1980 the defendants wrongfully procured the police to arrest the plaintiff and take him into custody on the ground that, as asserted by the defendants then, the plaintiff was a member of a gang which was terrorizing and intimidating the people at Cheroh Estate, Raub, Pahang and committing unlawful and violent acts. Acting upon the said complaints, the plaintiff was arrested and detained by the police on 17 March 1981 and was only released on 14 May 1983 subject to restricted conditions until 14 May 1984. The said detention and restriction orders were made purportedly under the Emergency (Public Order and Prevention of Crimes) Ordinance No 5 of 1969. The plaintiff alleges that the complaints by the defendants were made out of spite and malice towards the plaintiff. The plaintiff therefore claims that in the premises the defendants have caused the plaintiff to be wrongfully imprisoned and deprived of his liberty for a period of three years one month and 27 days and as a result he has suffered severe shock and mental anguish.

In the alternative, the plaintiff alleges that the defendants in or about 1980 wrongfully and maliciously conspired and combined among themselves to cause injury to the plaintiff and, accordingly, in his statement of claim the plaintiff spells out the overt acts of conspiracy on the part of the defendants. Learned counsel for the defendants argued that the pleadings did not disclose a reasonable cause of action and cited the case of *Marrinan* v *Vibart & Anor*.[1] The plaintiff in this case was formerly a barrister and was disbarred on 2 July 1957. He brought this action claiming damages for conspiracy against the defendants who were police officers attached to the Crimes Investigation Department of New Scotland Yard. In his statement of claim, the plaintiff alleged that between 2 July 1956 and 29 July 1957, the defendants conspired together with another person to injure the plaintiff and his reputation and standing as a barrister by making false and defamatory statements against him. Allegedly some of the statements were made to the director of public prosecution and used as evidence in a criminal trial and some in the nature of sworn evidence by the defendants before the same criminal court at the trial of the said same accused. Also, some of the statements referred to were made at an inquiry concerning the plaintiff before the Masters of the Bench of his Inn. The plaintiff failed in his action and if I may cite the words of Lord Esher MR as appearing in the judgment of Sellers LJ at p 383:

> It is true that, in respect of statements made in the course of proceedings before a court of justice, whether by judge, or

counsel, or witnesses, there is an absolute immunity from liability to an action. The ground of that rule is public policy. It is applicable to all kinds of courts of justice ...

Similarly, in the case of *Evans* v *London Hospital Medical College & Ors*,[2] the rule of absolute immunity was applied. In this case the statements were in the nature of the post-mortem report made by a pathologist and two toxicologists from the London Hospital Medical College and submitted to the director of public prosecutions and as a result of which the plaintiff was charged with the murder of her infant son. However, at the trial, the prosecution offered no evidence and the plaintiff was acquitted. The plaintiff brought an action against the pathologist, the two toxicologists and the hospital claiming damages for negligence in conducting the post-mortem and preparing the report and alternatively for malicious prosecution. On application by the defendants before the master, the plaintiff's claim was dismissed and the action was struck out as disclosing no reasonable cause of action on the grounds that:

(a) the claims for malicious prosecution failed because the defendants had not initiated the prosecution; and
(b) the defendants were covered by the absolute immunity rule from civil action accorded to witnesses in criminal proceedings in respect of his evidence and that immunity was extended to cover conduct or statements made prior to commencement of proceedings if it could fairly be said to be part of the investigation of a crime or possible crime for the purposes of a prosecution or possible prosecution.

In the instant case before me, the alleged statement or report by the defendants were made to the police purportedly for the purpose of effecting arrest and detention on the order of public officials under the Emergency (Public Order and Prevention of Crimes) Ordinance No 5 of 1969. The plaintiff's arrest was not made with a view to prosecute him before a court of law. It was done for the purpose of making an order of detention by the Minister. From the statement of claim in this case, I find that there are serious allegations of facts and equally serious is a question of law such as whether the rule of absolute immunity from civil action can be extended to cover ministerial orders which are made with the view to securing public order, suppression of violence or the prevention of crimes of violence under the Emergency (Public Order and Prevention of Crimes) Ordinance No 5 of 1969. In this regard, I am constantly reminded of the inherent power at my disposal to dismiss an action summarily but I must at the same time without fail give due deference to the words of caution often time expressed by our superior courts, and for this I wish to recall the words of our Federal Court appearing in its judgment delivered by Seah FJ, as he then was, in the case of *CC Ng & Brothers Sdn Bhd* v *Government of State of Pahang*[3] at p 350:

In our judgment, this is not a proper time to consider these rival submissions when the inherent jurisdiction of the court is invoked to strike out a writ and/or a statement of claim on the ground that it was an abuse of the process of the court. The inherent power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic power. It should be exercised with the utmost caution (per Lord Diplock in *Tractors Malaysia Bhd* v *Tio Chee Hing* (1975) 119 SJ 576). In *Lawrance* v *Norreys* (1890) 15 App Cas 210, Lord Herschell said words to the same effect that: 'It cannot be doubted that the court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the court. It is a jurisdiction which ought to be very sparingly exercised and only in very exceptional cases. I do not think its exercise would be justified merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved'. In our opinion, the question posed before the learned judge ought to be decided at the trial.

In the present case, as I have earlier indicated, there are serious questions both of fact and law to be determined which in their very nature can only be fully and satisfactorily dealt with in a proper trial. I therefore dismiss the appeal with costs.

*Appeal dismissed.*

Solicitors: *Yusuf Lee Pathma & Marbeck*; *Nijar & Nijar*.

Reported by *Mathavan Devadas*